

## Officer History

**Officer Name:** Mejia, David

**Tax ID:** 956088

**Shield:** 14943

**Rank:** POM

**DOB:** 10/04/1984

**Age:** 35

**Sex:** M

**Race:** Hispanic

**Command:** 254

**Appt Date:** 01/08/2014

**Tenure:** 6

CCRB #	Report Date	Incident Date	Allegation	Disposition	NYPD Disposition	NYPD Penalty	Command
201700548	01/23/2017	01/15/2017	Force - Physical force	Alleged Victim Unavailable			028
201706806	08/17/2017	08/11/2017	Force - Physical force	Substantiated (Command Discipline A)	No Disciplinary Action-DUP	No penalty	028
	08/17/2017	08/11/2017	Abuse - Question	Exonerated			028
	08/17/2017	08/11/2017	Discourtesy - Word	Unsubstantiated			028
	08/17/2017	08/11/2017	OMN - Failure to prepare a memo book entry	Other Misconduct	Instructions	No penalty	028
<b>Total Charges = 5</b>					<b>Total Cases = 2</b>		

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charlie Hartford	Team: Squad #16	CCRB Case #: 201706806	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourtesy
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Fri, 08/11/2017 7:41 PM	Location of Incident: 37 Malcolm X Boulevard	Precinct: 28	S.O.L. Expires: 02/11/2019	
Date/Time CV Reported Sat, 08/12/2017 8:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/17/2017 12:57 PM	

Complainant/Victim	Type	Home Address
1. [REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
1. Sir Unknown	[REDACTED]
2. [REDACTED]	Unknown

Subject Officer(s)	Shield	TaxID	Command
1. POM David Mejia	14943	956088	028 PCT
2. POF Tammie Garcia	20329	929524	028 PCT
3. POF Natalie Prisco	04940	959906	028 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Filipp Khosh	00000	930478	028 PCT
2. POM Tianyou Liang	20163	958817	028 PCT
3. POM David Galindez	18334	958611	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM David Mejia	Abuse of Authority: Police Officer David Mejia questioned [REDACTED]	A . Exonerated
B . POM David Mejia	Discourtesy: Police Officer David Mejia spoke discourteously to [REDACTED]	B . Unsubstantiated
C . POM David Mejia	Force: Police Officer David Mejia used physical force against [REDACTED]	C . Substantiated
D . POF Tammie Garcia	Discourtesy: Police Officer Tammie Garcia spoke discourteously to [REDACTED]	D . Unsubstantiated
E . POM David Mejia	Other: Police Officer David Mejia failed to prepare a memo book entry as required.	E . Other Misconduct
F . POF Natalie Prisco	Other: Police Officer Natalie Prisco failed to prepare a memo book entry as required.	F . Other Misconduct

### Case Summary

On August 12, 2017, [REDACTED] filed this complaint with IAB under original log #17-31023. The case was received by the CCRB on August 17, 2017.

On August 11, 2017, at approximately 7:41 p.m., in the vicinity of 37 Malcolm X Boulevard in Manhattan, PO David Mejia questioned [REDACTED] (**Allegation A: Abuse of Authority, exonerated.**). PO Mejia allegedly called [REDACTED] a “clown” and a “joker,” and told [REDACTED] to “shut the fuck up” and “stop being a fucking punk” (**Allegation B: Discourtesy, unsubstantiated**). PO Mejia pushed [REDACTED] (**Allegation C: Force, substantiated**). PO Tammie Garcia allegedly told [REDACTED] to “move the fuck back” or “back the fuck up” (**Allegation D: Discourtesy, unsubstantiated**). PO Mejia and PO Prisco did not prepare memo book entries with regard to this incident (**Allegation E and Allegation F: Other Misconduct Noted**).

This case contains video evidence. Footage obtained from the Fine Fare Supermarket at 37 Malcolm X Boulevard can be found at Board Review 02. A transcription of the portions depicting the incident can be found at Board Review 03. Video footage recorded by [REDACTED] can be found at Board Review 17, while a transcription of that footage can be located at Board Review 18.

### Findings and Recommendations

#### Allegation A – Abuse of Authority: Police Officer David Mejia questioned [REDACTED]

It is undisputed that PO Mejia approached and questioned [REDACTED] on the date of incident.

[REDACTED] stated in his verified interview that on August 11, 2017, at approximately 7:41 p.m., he was approached by PO Mejia and PO Garcia outside of a chicken store at West 111<sup>th</sup> Street and Malcolm X Boulevard (Board Review 07). PO Mejia addressed [REDACTED] by stating, “Hey joker, hey clown with the purple shorts,” and asked, “Come here, can I talk to you?” [REDACTED] began walking away towards West 112<sup>th</sup> Street, and was followed by PO Mejia, who stated, “Hey joker, you look silly with your purple shorts,” and “Oh, I can’t talk to you for a second? Why are you walking away? Come here, I’m just trying to say something to you.” PO Mejia also stated, “What, I can’t talk to you? Are you scared? Don’t be a punk.” [REDACTED] then stopped in front of 37 Malcolm X Boulevard and asked PO Mejia to stop bothering him.

[REDACTED] phone statement was consistent with his verified interview (Board Review 08).

PO Mejia stated in his CCRB interview that, as neighborhood coordination officers, he and PO Garcia receive frequent complaints from business owners regarding individuals loitering and engaging in drug transactions near 37 Malcolm X Boulevard (Board Review 09). As a result, PO Mejia and PO Garcia go to this area on a daily basis and attempt to move individuals from the area. On the date of incident, PO Mejia approached [REDACTED] in the vicinity of 37 Malcolm X Boulevard, introduced himself, and asked [REDACTED] to move along. PO Mejia could not recall the nature of the argument that then ensued. PO Mejia stated he did not approach [REDACTED] for any reason other than asking him to move along, and that [REDACTED] was free to go throughout the entire interaction.

PO Garcia's CCRB statement was consistent with PO Mejia's (Board Review 10). The statements provided by PO Garcia, PO David Galindez, PO Tianyou Liang, PO Prisco and Lt. Filipp Khosh were all consistent with there being a recognized precinct condition of individuals loitering and engaging in drug sales in the vicinity of 37 Malcolm X Boulevard (Board Review 10, 11, 12, 13 and 14).

In New York v Hollman, 79 NY2d 181, 185 [1992], the Court of Appeals of New York stated, "[A] request for information involves basic, nonthreatening questions regarding, for instance, identity, address or destination," and that "these questions need be supported only by an objective credible reason." The court continued to state, "Once the officer asks more pointed questions that would lead the person approached reasonably to believe that he or she is suspected of some wrongdoing and is the focus of the officer's investigation... this has become a common-law inquiry that must be supported by a founded suspicion that criminality is afoot (Board Review 11).

Though the exact statements made PO Mejia made to [REDACTED] are in dispute, in neither party's version of events would PO Mejia's statements lead one to believe that he or she was suspected of a crime or the subject of a criminal investigation (Board Review 07, 09, and 10). Thus, this interaction does not rise to the level of a common-law inquiry, and PO Mejia's questioning of [REDACTED] only required an "objective credible reason" to be permissible. Such a reason was furnished by PO Mejia. It is therefore recommended that **Allegation A** be closed as **exonerated**.

**Allegation B - Discourtesy: Police Officer David Mejia spoke discourteously to [REDACTED]**

**Allegation D - Discourtesy: Police Officer Tammie Garcia spoke discourteously to [REDACTED]**

In his sworn statement, [REDACTED] stated that in addition to PO Mejia calling him a "joker" and a "clown," PO Mejia stated to [REDACTED] "Shut the fuck up," and "Stop being a fucking punk" (Board Review 07). After [REDACTED] called 911 and a supervisor, Lt. Khosh, responded to the scene, [REDACTED] attempted to approach Lt. Khosh's vehicle and was told by PO Garcia to either "back the fuck up" or "move the fuck back."

In his phone statement, [REDACTED] alleged that PO Mejia told him to "shut up," but did not mention PO Mejia using profanity (Board Review 08). [REDACTED] phone statement was otherwise consistent with his sworn statement.

PO Mejia stated in his CCRB interview that he did not recall telling [REDACTED] "Shut the fuck up," calling him a "punk," or calling him a "fucking punk" (Board Review 09). PO Mejia denied calling [REDACTED] a "clown" or a "joker." PO Mejia could not recall if he used profanity during the interaction. PO Mejia did not recall PO Garcia telling [REDACTED] to "Move the fuck back," issuing any instructions to [REDACTED] or directing any profanity towards [REDACTED]

PO Garcia stated in her CCRB interview that she did not recall PO Mejia making the statements alleged in this allegation, though she stated that PO Mejia may addressed [REDACTED] by stating, "You with the purple shorts" (Board Review 10). PO Garcia did not recall if PO Mejia called [REDACTED] a "clown" or "joker." PO Garcia stated that upon her and [REDACTED] approaching Lt. Khosh's vehicle, she stated, "Just stand back; let me speak to my supervisor." PO Garcia did not tell [REDACTED] "Move the fuck back," and did not recall using profanity during the interaction.

Lt. Khosh, PO Galindez, PO Liang and PO Prisco were all present when PO Garcia allegedly told [REDACTED] "Move the fuck back" (Board Reviews 11, 12, 13 and 14). None of these officers' CCRB statements corroborated [REDACTED] allegation.

The discourteous statements allegedly made by PO Garcia may have been captured during [REDACTED] call to 911 at 16:33 minutes and 16:34 minutes into the recording (Board Review 19 and Board Review 20). However, it is not clearly discernable whether the voice depicted in this recording belongs to PO Garcia or whether the statements contain profanity. None of the statements alleged by [REDACTED] are captured in video evidence pertaining to this case (Board Review 02 and 17)

PO Mejia and PO Garcia both either did not recall or denied making the statements contained in this allegation (Board Review 09 and 10). The investigation was unable to locate any independent witnesses to these allegations, and no officer corroborated [REDACTED] account (Board Reviews 11, 12, 13 and 14). It is therefore recommended that **Allegation B** and **Allegation D** be closed as **unsubstantiated**.

#### **Allegation C – Force: Police Officer David Mejia used physical force against [REDACTED]**

It is undisputed that during the interaction, [REDACTED] asked PO Mejia for his shield number and attempted to record PO Mejia [REDACTED] using his phone. It is undisputed that [REDACTED] closely approached PO Mejia, and that PO Mejia told [REDACTED] to move back while making physical contact with [REDACTED] at least once.

In his verified statement, [REDACTED] stated that after PO Mejia told him to "Shut the fuck up," [REDACTED] replied, "You shut the fuck up," and requested PO Mejia's badge number (Board Review 07). [REDACTED] described his demeanor at this point as being similar to his demeanor around the 35:58 minute mark of his CCRB interview, at which time he was speaking in a raised tone of voice. PO Mejia told [REDACTED] that he could approach, and also indicated he could do so by making a beckoning motion with his arms. PO Mejia also made poses for [REDACTED] by crossing his arms and slanting his body to the side and lifting his shield up and away from his shirt using his hands. [REDACTED] then walked up to PO1 to take a picture of his shield because he was not wearing glasses and could not see clearly. [REDACTED] extended his arm so that his phone was approximately a foot away from PO Mejia's chest, at which point PO Mejia pushed [REDACTED] with both hands and stated, "Move back." PO Mejia did not give any indication that [REDACTED] was too close before pushing him. After [REDACTED] objected to PO Mejia's actions, PO Mejia stated that [REDACTED] was too close to him. [REDACTED] phone statement was consistent with his statements made during his verified interview (Board Review 08)

PO Mejia stated in his CCRB interview that after [REDACTED] requested his name and shield, PO Mejia replied, “Absolutely” (Board Review 09). PO Mejia asked if [REDACTED] needed him to write down this information for him, to which [REDACTED] replied, “No.” [REDACTED] then pulled out his phone began recording PO Mejia. PO Mejia never verbally or physically indicated that [REDACTED] could approach him. [REDACTED] came up to a distance of approximately a foot or two away from PO Mejia, at which point PO Mejia extended his right arm and stated, “Listen, this is my personal space. You can record, just don’t get too close to me.” PO Mejia stated that he did not perceive [REDACTED] as posing a threat during the interaction, and that he extended his arm because [REDACTED] was too close. PO Mejia stated that he “barely” made contact with [REDACTED] and this contact occurred one time. PO Mejia could not recall [REDACTED] response to this action or recall [REDACTED] demeanor. PO Mejia denied pushing [REDACTED] or using any other type of physical force against [REDACTED].

PO Garcia’s statement to the CCRB was consistent with PO Mejia’s, with the exception that she did not recall PO Mejia making physical contact with [REDACTED] (Board Review 10).



201706806\_20171105\_2032\_DM.mp4

Video surveillance footage was obtained by the investigation from the Fine Fare Supermarket at 37 Malcolm X Boulevard (Board Review 01). The footage depicts this portion of the incident. [REDACTED] can be seen standing in front of PO Mejia with an object the size of a phone in his hand. PO Mejia’s body is largely obscured by a brick wall; however, he appears to be moving his arms and slanting his body in a manner consistent with [REDACTED] description of his actions (Board Review 07). [REDACTED] takes two steps forward, at which point PO Mejia’s left arm moves towards [REDACTED] simultaneously moves back a step, reestablishing the previous distance between him and PO Mejia (Board Review 01). It is unclear whether PO Mejia makes physical contact with [REDACTED] at this time. PO Mejia’s left hand then moves forward again and appears to make contact with [REDACTED] right shoulder, while [REDACTED] arms move out and around in a circular motion. PO Mejia’s right arm is not visible. [REDACTED] can then be seen again stepping back from PO Mejia, before walking off screen to the right.

[REDACTED] was shown this footage during his CCRB interview (Board Review 07). [REDACTED] noted that this footage depicted PO Mejia pushing him twice, whereas he had only remembered being pushed once.

PO Mejia was also shown this footage during his CCRB interview (Board Review 09). At the point in the video at which PO Mejia is first seen extending his arm, PO Mejia stated “I think this is where he got close to me and I asked him to move back.” After the point at which PO Mejia can be seen moving his arm towards [REDACTED] again, PO Mejia stated “Yeah, that’s where I asked him to give, you know, give me my space, he was too close to me.” After watching the relevant portion of the video twice, PO Mejia stated that he did not want to amend his prior statement that he did not push [REDACTED] nor did we he want to amend his statement that he only made physical contact with [REDACTED] once.



201706806\_20171115\_0839A\_DM.MP4

These same events are partially depicted in video footage recorded by [REDACTED] during the incident using the application Snapchat (Board Review 17). The recording appears to start in the middle of the second movement of PO Mejia's arms depicted in the previously discussed footage. Between 00:00 and 00:02 in the footage, PO Mejia's right arm is clearly depicted extending forward so that his hand is located just below the camera. Between 00:02 and 00:04 of this footage, both of PO Mejia's hands can then be seen falling to his sides.

NYPD Patrol Guide Procedure 221-02 states: "Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody...When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force." (Board Review 16).

It can be conclusively determined from video evidence obtained from the Fine Fare Supermarket that PO Mejia extended his arms twice towards [REDACTED] (Board Review 01). There is insufficient evidence to determine whether the first of these movements constituted a push or a mere "extension of the arm" — as PO Mejia characterized this action — or whether PO Mejia made physical contact with [REDACTED] at that time. Based upon video evidence, however, the second movement can be definitively characterized as PO Mejia pushing [REDACTED] with two hands (Board Review 01 and 17).

PO Mejia was not arresting [REDACTED] and stated that he did not perceive [REDACTED] as posing a threat during the encounter (Board Review 09). Though PO Mejia denied inviting [REDACTED] to approach him, PO Mejia affirmed that he was aware that [REDACTED] was using his phone to record the interaction. PO Mejia also affirmed holding his shield out towards [REDACTED] with both hands to facilitate [REDACTED] obtaining his shield number. Video evidence appears to show PO Mejia posing by "crossing his arms and slanting his body to the side" in precisely the manner alleged by [REDACTED]. It is clear from video evidence, and from PO Mejia's own testimony, that none of the justifications found in the Patrol Guide for use of force apply to this circumstance.

The justification provided by PO Mejia — establishing distance from a civilian who was "too close," but whom he did not perceive as posing a threat — could only justify the use of an extremely minimal amount of force by a member of service. Extending one arm and making physical contact with a civilian may be appropriate under these circumstances; physically pushing or shoving a civilian back is not. Additionally, the video evidence in this case makes it clear that [REDACTED] had already moved back at the time that he was pushed by PO Mejia, which undercuts the utility of this justification (Board Review 01). PO Mejia's actions furthermore directly contravene the guidelines contained in the Patrol Guide regarding the use of de-escalation techniques by members of service (Board Review 16).

Although the amount of force used by PO Mejia lies on the lesser end of the scale at the disposal of members of the NYPD, it is the investigation's determination that PO Mejia's use of force was not in the furtherance of any legitimate law enforcement objective and was thus not reasonable given the totality of the circumstances. It is therefore recommended that **Allegation C** be closed as **substantiated**.

**Allegation E – Other: Police Officer David Mejia failed to prepare a memo book entry as required.**

**Allegation F – Other: Police Officer Natalie Prisco failed to prepare a memo book entry as required.**

It is undisputed that PO Mejia interacted with [REDACTED] in the course of performing duties pursuant to his role as a neighborhood coordination officer (Board Review 09). It is also undisputed that PO Prisco responded to the location with Lt. Khosh with regard to this incident (Board Review 14).

Neither PO Mejia nor PO Prisco prepared a memo book entry with regard to this incident (Board Reviews 09, 14, 22 and 23).

Patrol Guide Procedure 212-08 states that officers must prepare memo book entries for tasks performed and of all information pertinent to actions taken (Board Review 21).

PO Mejia performed a police action which resulted in a lieutenant responding to his location regarding an allegation of harassment and did not prepare a corresponding memo book entry. PO Prisco responded to a radio run regarding this incident and did not prepare an entry in her memo book. It is therefore recommended that **Allegation E** and **Allegation F** be closed as **other misconduct noted**.

#### **Mediation, Civil and Criminal Histories**

- Mediation was offered to [REDACTED] over the phone on August 30, 2017, as well as during his CCRB interview on September 12, 2017 (Board Review 07 and 08). [REDACTED] rejected mediation and stated that he wanted PO Mejia disciplined for his actions.
- A FOIL request made on October 28, 2017 indicated that [REDACTED] has not filed a notice of claim regarding this incident (Board Review 04).
- Within the past ten years, [REDACTED] has been convicted of four times, as detailed below (Board Review 05):
  - Harassment in the second degree, for which [REDACTED] served time in jail.
  - Criminal trespass in the second degree, for which [REDACTED] served time in jail.
  - Criminal mischief in the fourth degree, for which [REDACTED] served time in jail and was served with an order of protection.
  - Criminal contempt in the second degree, for which [REDACTED] served time in jail and was served with an order of protection.



**Civilian and Officer CCRB Histories**

- This is [REDACTED] fourth CCRB complaint (Board Review 06).
  - PO Mejia has been a member of the NYPD for three years. He has one prior CCRB complaint for physical force which was closed as Victim Unavailable.
  - PO Garcia has been a member of the NYPD for 15 years. She has 14 prior allegations in 10 cases. Three of these allegations are for Discourtesy – Word, the dispositions of which have been noted below.
    - CCRB 200606738: Complaint Withdrawn
    - CCRB 200615801: Unsubstantiated
    - CCRB 201007971: Unsubstantiated
- 

Squad: \_\_\_\_\_

Investigator:			
	Signature	Print	Date

Squad Leader:			
	Title/Signature	Print	Date

Reviewer:			
	Title/Signature	Print	Date